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OFFICE OF PETITIONS

In re Patent No. 6,978,251 :
Applicant WATANABE : DECISION ON REQUEST
Application No. 09/657,360 : FOR RECONSIDERATION OF
Filed: September 7, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 040447/0225 : and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed December 9, 2005. Pursuant to patentee's duty of good faith and candor to the Office, patentee requests confirmation of the issuance of a patent term adjustment of 227 days.

The request for review of the determination of patent term adjustment (PTA) is granted.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one (1)** day.

On December 9, 2005, patentee submitted the instant comment. On December 20, 2005, the above-identified application matured into U.S. Patent No. 6,978,251, with a revised patent term adjustment of 227 days. Patentee states no basis for the request for review of the patent term adjustment. Nonetheless, a review of the application history confirms that an incorrect number of days were determined for USPTO delay and applicant delay.

There were no grounds for entry of a period of adjustment for USPTO delay of the mailing of the notice of allowance. The entry of a period of adjustment of 135 days was entered in error. Specifically, a period of adjustment of 135 days was entered for Office delay in taking action in response to applicant's amendment after final rejection filed October 21, 2004. However, this reply was not in compliance with § 1.113(c), and therefore should not have been taken into account for the period of adjustment. A second reply to the Office's final rejection, an amendment after Notice of Appeal, was filed on May 4, 2005 and construed as a proper reply under § 1.113(c). This second reply did not result in any period of adjustment because the number of days from the date of the reply of May 4, 2005 until the mailing of the notice of allowance under 35 U.S.C. 151 was within 4 months. Accordingly, the entry of 135 days has been changed to zero days for USPTO delay.

The PTA calculations failed to adjust for the notice of appeal filed on February 4, 2005. The entry of zero days was in error. Specifically, the notice of appeal was applicant's reply to a final office action mailed August 5, 2004. Therefore, a period of adjustment for applicant delay in taking action in excess of three months to reply to an office action resulted in a period of adjustment of 91 days. Accordingly, an entry of 91 days for a period of adjustment was entered for Applicant delay.

In view thereof, the patent should have issued with a revised Patent Term Adjustment of one (1) day (246 days for PTO delay and 245 days for Applicant delay).

It is noted that this patent is subject to a terminal disclaimer.

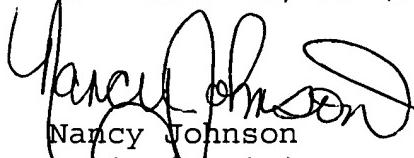
As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicant for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ONE (1)** day.

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Telephone inquiries specific to this matter should be directed to Amelia Au, at (571) 272-7414.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction
Copy of Revised PAIR Screen

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,978,251 B1
DATED : December 20, 2005
INVENTOR(S) : Watanabe

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (227) days

Delete the phrase "by 227" and insert - by 1 day--